

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 949 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHAR S CHRISTIAN

Versus

RAMPRAVESH BARKHANDI YADAV

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Appearance:

MR MG NAGARKAR WITH MR SN SHELAT for Appellant

MR MM SHAIKH, for Respondent No.1

MR KT DAVE, APP for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/03/98

ORAL CAV JUDGEMENT

1. This appeal is preferred by the Food Inspector, Ahmedabad Municipal Corporation - original complainant, against the judgment dated 28.12.1989 passed by the ld. Metropolitan Magistrate, Court No.8, Ahmedabad acquitting

the respondent no.1 accused of the offences punishable under Sec. 16(1)(A)(I) read with Sec.7 of the Prevention of Food Adulteration Act. (Hereinafter referred to as the PFA Act).

2. According to the case of the prosecution, respondent no.1 - accused (hereinafter referred to as the accused for the sake of convenience) had sold adulterated milk on 25.1.1988 to the complainant Food Inspector when he visited the shop of the accused. According to the prosecution case, the milk which was sold by the accused to the Food Inspector, was sent to the Public Analyst and the same was found adulterated as per the report of the Public Analyst. On the basis of the said report, a complaint was lodged and criminal case came to be registered being Criminal Case No. 1540/88 in the Court of Metropolitan Magistrate, Ahmedabad. After recording evidence and considering explanation offered by the accused, the ld. Magistrate acquitted the accused vide impugned judgment. Appellant-Ahmedabad Municipal Corporation, being aggrieved and dissatisfied with the impugned judgment, has preferred this appeal and State of Gujarat is joined as Respondent no.2.

3. Learned Counsel Mr. M.G.Nakarkar, for ld. counsel Mr. S.N. Shelat, appearing for the appellant, has argued at length and has assailed the judgment on various grounds as mentioned in the memo of appeal. However, Mr. Nagarkar mainly concentrated on the finding of the learned Magistrate that the milk found adulterated at the time of analysis which was taken as sample from the accused, was not for sale. He also assailed the finding of the ld. Magistrate that the accused is running hotel and is selling ready-made tea and the complainant Food Inspector was told on the spot that the milk kept in the shop of the accused was not for sale. According to Mr. Nagarkar, Ld. Magistrate has not considered the ratio of the judgment of the Hon'ble Supreme Court in the case of Food Inspector, Calicut v. C. Gopalan, reported in AIR 1971 SC 1725. Even selling of an article to the Food Inspector for the purpose of analysis under the provisions of the PFA Act amounts to sale. By placing reliance on the decision in the case of Municipal Corporation of Delhi v. Laxmi Narain Tadon etc., reported in AIR 1976 SC 621. He further submitted that the scheme and purpose of the Act ought not to have been ignored by the learned Magistrate.

4. Learned counsel Mr. Nagarkar has also submitted that the ld. Magistrate has erred in holding that the sanctioning authority had no power to give sanction to

prosecute the accused. Quoting Sec.20(1), Mr. Nagarkar submitted that what is required is the written consent of the person authorised by general or special order. Learned Magistrate has not properly appreciated law on the basis of set of facts available on record. According to Mr. Nagarkar, once the written consent is granted by proper authorisation and the Court has taken cognizance thereof, the Trial cannot be held to be invalid. Even a purchaser under Sec.12 of the PFA act has the authority to launch prosecution. In the case on hand, the Food Inspector who has lodged complaint himself, is the person who had collected sample from the shop of the accused. Therefore, finding of the learned Magistrate requires to be reversed and it should be held that the accused is guilty of the offence with which he is charged.

5. Learned counsel Mr. Shaikh appearing for the accused has submitted that the findings of the ld. Magistrate are in accordance with law and the evidence is rightly appreciated and the findings of the ld. Magistrate does not require interference. According to Mr. Shaikh, the case of the prosecution should stand on its own legs and at the time of evaluating the case of the prosecution, defence version also should simultaneously be considered, especially when it is consistent from the very beginning. The accused should not be convicted on technical pleas. It is the say of the accused from the beginning that he is running hotel and milk kept in his shop was to be used for preparing tea. The alleged adulteration found in the report of the Public Analyst by itself corroborates the version of the accused. The complainant has played game of hide and seek and has not drawn panchanama and also tried to put curtain on the fact that in the shop of the accused, there were tables, benches, chairs etc. which are not normally kept in a shop of milk-seller. A person who was kept as an independent witness at the time of drawing sample, is examined by the prosecution and that gentleman is examined at Exh. 13 and has supported the say of the accused. He has submitted that there were benches, tables, chairs etc. in the shop {Chhapra} from where sample was collected. Even for the sake of arguments it is accepted that no formal panchanama is required to be drawn of the place in question from where the sample was collected, nonavailability of such panchanama if creates doubt in the basic story of the prosecution or if it is found that the act of not drawing panchanama of the shop is with an ulterior motive, or if it is found that this infirmity goes to the root of the story of the prosecution, then that aspect cannot be ignored. According to Mr. Shaikh, even for the sake of arguments

it is accepted that giving a sample milk to the Food Inspector amounts to a "sale" within the meaning of PFA act, even then, the ultimate finding of acquittal recorded by the 1d. Magistrate is sustainable. As the accused has denied the very sale of sample milk, non-examination of the independent witness is fatal to the prosecution case.

6. Learned counsel Mr. Shaikh appearing for the accused has submitted that the sample in question though analysed on 28th January, 1988, the concerned authority had not signed the report of the Analysis on the same day. Exh.3 report of the Public Analyst is signed on 22nd February, 1988 and no logical explanation is coming forth, and therefore, the report should not be given any weightage. The "freezing point test" was also not performed and the report Exh. 3 shows that the sample taken by the appellant Food Inspector is found not upto the standard as to the percentage of SNF i.e., Milk Solid Non-fat. According to the complainant-Food Inspector, the same sample taken was of the cow milk and milk solid non-fat was found to be 1.15% less than the standard prescribed.

7. This Court, in its decision reported in XXIII (2) GLR p-624 in case of State of Gujarat v. Bhagubhai Ramjibhai, has dealt with the point as to the importance of freezing point test in case of analysis of food article - milk, and according to the ratio of this judgment, the finding of lower Court does not require interference.

8. Mr. Shaikh has relied on some case laws and has submitted that as per the ratio established by the Hon'ble Andhra Pradesh High Court in case of P. Naidu v. State of Andhra Pradesh, reported in 1988 (1) Crimes P-771, non-examination of independent witnesses should be held fatal. In this reported case, the Hon'ble Andhra Pradesh High Court has held that when conviction is only on the evidence of Food Inspector under Section 16 (1) and when accused had denied the very sale of the sample of milk, non-examination of independent witnesses is fatal to the case of prosecution. Without going into the question as to whether this decision would be squarely applicable to the facts of the case at hand, it is important to note that the learned Metropolitan Magistrate has evaluated the aspect as to the importance of non-examination of independent witness in the case before him. The discussion in para-20 of the judgment under challenge is based on sound logic and the relevant legal provisions i.e. Section 10(7) of PFA Act and Section 100 of Code of Criminal Procedure.

9. There is material difference between the report of Central Food Laboratory, Ghaziabad and the report of the Public Analyst of State Government laboratory. In this contingency, the evaluation of evidence vis-a-vis the method of taking sample, place from where the sample was taken, non drawing of panchnama, etc., undertaken by the trial court cannot be said to be erroneous, and therefore, the finding of the lower Court does not require interference.

10. The aspect of non-signing of the report of Analysis by the authority on the very day of analysis of the sample was considered by this Court {Coram : N.N Mathur, J.} in Criminal Appeal No. 200 of 1987 wherein it is held that, "...The Division Bench of the Bombay High Court took the view that if the report of the public analyst was not made at the same time when the sample was analyzed but was made later on, then the basis of the notes of analyst made at the time of analysis will cease to have evidentiary value which the act imparts to be report of the public analyst. The learned counsel appearing for the accused-respondent states at the Bar that there is no judgment of this Court. I am in complete agreement with the view taken by the Bombay High Court."

11. I have gone through the entire judgment alongwith reports of Public Analyst of State Government Laboratory as well as of Central Food Laboratory. As referred earlier, the sample of cow milk in the case on hand was taken on 25th January, 1988 and the same was examined by the Laboratory on 28th January, 1988. The report of the examination was not signed on the same day and the same was signed on 22nd February, 1988. The same was sent to Ghaziabad Central Food Laboratory of Government of India and is analyzed in the month of February, 1989. Reports of both these laboratories differs materially on the findings as to the milk food and milk SNF but is it pertinent to note that both corroborates as to the findings for the test for formalin, test for cane sugar and test for starch. It seems that the learned Magistrate at the time of evaluating the totality available on record has considered all relevant aspects before holding accused not guilty for adulteration and also to appreciate the defence of the accused that he is a Tea Vendor, Hotelier and the milk from which sample was drawn was milk in the process of preparing ready-tea. Here, complainant - Food Inspector has tried to put curtain on some of the parts of events occurred at the time of drawing the sample.} The learned Magistrate has

rightly raised doubts as to the presence of the independent witness/es at the time of drawing sample. A witness, cited as an independent witness, has been examined by the prosecution in case on hand vide Exh. 13 but has supported, materially to the defence version.

12. Consistency in defence version is a relevant aspect as per the basic rule of criminal jurisprudence. Ready mixture kept for preparation of any food or edible article and when such process is on, then even of taking of sample from that very food article or material under process kept or lying ready as mixture should be evaluated in the proper perspective of each case. It would depend on facts of each case - as for example - a sweet-meat seller has kept sugar ready with saffron or other permissible edible colour, elaichi or any such permissible ingredient and before he could use that sugar in preparing a particular sweet, a Food Inspector if takes sample of that sugar for the purpose of analysis it may not conform the prescribed standard under PFA Act and would be found adulterated or sub-standard. Here, when an independent witness has supported the defence version and when the testimony of the Food Inspector is not found wholly trustworthy by the learned Metropolitan Magistrate, on some material and crucial aspect, the nature of alleged adulteration or failure to meet with the prescribed standard under the PFA Act, is very material.

13. The forwarding letter of Central Food Laboratory, Ghaziabad, which is at page 35 of the paper-book shows that the certificate of analysis was sent to the learned Metropolitan Magistrate, ie., the trial Court on 14th February, 1989, and the same was received by the learned Magistrate on 27th February, 1989. The certificate issued by the Central Food Laboratory does not bear any date but it seems that the sample for analysis was received by the Laboratory on 31st January, 1989 and after examination, the certificate was prepared in the month of February, 1989. It is not a matter of dispute that the sample does not conform to the standard of Cow milk for Gujarat, prescribed in the statutory table.

14. Submission of Mr. Nagarkar is based on the legal interpretation of word, "Sale", as defined in Section 2 (xiii). In the cited case reported in AIR 1971 SC 1725 {Supra} wherein the respondent was held technically acquitted but the Hon'ble Supreme Court had not set-aside the order of acquittal passed in favour of the respondent. The judgment reported in case of Delhi Municipality v. L.N Tandon, AIR 1976 SC 621 {Supra} also

covers the interpretation and the umbrella of the word, "sale" defined in the section. Here, the learned Magistrate after appreciating the evidence has also mentioned in the judgment that the drawing of the sample by the complainant - Food Inspector was a "sale" technically but the totality does not give the convincing proof as to the offence punishable under the PFA Act for which accused was facing the charge. In various pronouncements when the only "sale" is held to be proved technically and the case of prosecution suffers from any basic infirmities then in those cases, this Court and other High Courts; including the Hon'ble Apex Court, have not set aside the order of acquittal passed in favour of the accused persons.

15. The finding of the learned Magistrate on the point of consent-sanction is not well-founded but as the same does not go to the root of the ultimate finding of the learned Magistrate, it is not required to be discussed at length. The submission of Mr. Nagarkar on this count is convincing and based on legal pronouncements but this does not carry appellant's case any further.

16. Absence of carrying out freezing point test is also one of the infirmity specially when the sample does not conform to the standard of cow milk so far as percentage of fat is concerned. The learned advocate Mr. Shaikh has rightly relied on the case reported in 23 (2) GLR 624 {Supra}. So, finding of the learned Magistrate as to the insufficiency and non-convincing evidence to hold accused guilty of the offence is based on cogent circumstances and other facts available on record.

17. In view of the above fact, appeal is dismissed and the judgment and order of acquittal recorded in favour of the respondent-accused Rampravesh Barkhandi Yadav is confirmed.

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